

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In re Applications of)	MM Docket No. 93-89
AURIO A. MATOS)	File No. BPH-911114MS
LLOYD SANTIAGO-SANTOS and LOUDRES)	
RODRIGUEZ BONET)	File No. BPH-911115MP
For Construction Permit for a New)	
FM Station on Channel 293A in)	
Culebra, Puerto Rico)	

To: Honorable Joseph P. Gonzalez
Administrative Law Judge

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 FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

REPLY TO OPPOSITION TO PETITION TO ENLARGE ISSUES

Aurio A. Matos ("Matos"), by his counsel and pursuant to §§ 1.45 and 1.229(d) of the Commission's Rules, replies to the Opposition to Petition to Enlarge Issues filed by Lloyd Santiago-Santos and Lourdes Rodrigues-Bonet ("Santiago and Rodrigues") on August 31, 1993. This reply would have been due on September 13, 1993, but the Presiding Judge has granted Matos' request for an extension of time to reply until September 16, 1993. Santiago and Rodrigues argue in their opposition that Matos' Petition to Enlarge Issues (the "Petition") was not timely filed and, even if considered on the merits, lacks substance. In fact, their Opposition only serves to make the allegations contained in the Petition more credible.

THE TIMELINESS ARGUMENT

1. Santiago and Rodrigues argue that Matos should have been aware of the location of their public file long before the Petition was filed, and therefore, as a procedural matter the merits of the Petition should not be considered. The time Matos discovered the

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location of the Santiago and Rodrigues public file is not the correct date from which to commence a timeliness analysis. The most serious allegation raised by Matos concerns assertions made by Santiago and Rodrigues during their depositions that were later found to be untrue. ^{1/} The evidence upon which the requested misrepresentation issue is based was not available to Matos until transcripts of the depositions were provided to counsel on July 22, 1993. The Petition was filed one day after fifteen days from the date of receipt of those transcripts. Considering the gravity of the charges raised by Matos, the Petition was timely enough to warrant consideration of its substance. ^{2/}

**CONSIDERATION OF THE PUBLIC FILE AND
REPORTING ISSUES MAY BE DECISIONALLY SIGNIFICANT**

2. Santiago and Rodrigues incorrectly claim that the requested public file and § 1.65 issues "lack decisional significance." While each issue standing alone might lack decisional significance, the two alleged rule violations taken together and coupled with Santiago and Rodrigues' past § 1.65 deficiencies, demonstrate a pattern of inattentiveness to FCC rules that can lead to a comparative demerit. See, WABZ, Inc., 51 RR2d

^{1/} The other requested issues deal with continuing rule violations which relate to Santiago and Rodrigues' actions (or omissions) concerning the establishment and maintenance of their public file, as does the requested misrepresentation issue.

^{2/} In any event, when there is a misrepresentation issue of potentially decisional significance involved, the public interest requires consideration of even late-filed petitions to enlarge issues. See, Charles Ray Shinn, 62 RR2d 616 (ALJ 1987), citing, Adjudicatory re-regulation Proposals, 58 FCC 2d 865 (1976) (pp. 873-4).

1507 (1982). Assessment of such a demerit in this proceeding may well be decisively significant.

3. Previously, Matos had requested the addition of an issue based on the failure of Santiago and Rodriguez to timely amend their application to report the other media interests of family members. At the time, the Presiding Judge denied the requested issue because, taken by itself, the violation did not represent a pattern of repeated and willful violations of the Commission's reporting requirement (§ 1.65). Memorandum Opinion and Order, 93M-351, released June 14, 1993. However, the Presiding Judge warned Santiago and Rodriguez that repeated rules violation could lead to the specification of a special trial issue. As Matos asserts in the Petition, a pattern of continued non-compliance with FCC rules can lead to a comparative demerit, which could be decisive in the instant proceeding.

SPECIFICATION OF A MISREPRESENTATION ISSUE IS WARRANTED

4. Matos alleged in his petition that despite their deposition testimony stating that they had established a public file in Culebra on June 23, 1993, there was no public file for their application in Culebra on August 2, 1993. ^{3/} Santiago and

^{3/} Santiago and Rodriguez argue that because the deposition testimony was made during the discovery stage of the proceeding and has not been filed at the FCC, it is not relevant whether or not Santiago and Rodriguez told the truth. This argument defies logic. The testimony was given under oath during the discovery phase of an FCC proceeding. The only reason it has not been filed is because Santiago and Rodriguez have not yet seen fit to comply with the rule that requires depositions to be filed. See § . Since there will be no opportunity to impeach Santiago and Rodriguez at a trial on the standard issues, this is event further reason why the requested misrepresentation issue must be added.

Rodrigues now claim that they shipped a package containing the documents to be placed in the public file to Culebra on June 23rd. According to Sr. Santiago, the documents were shipped by air carrier and Mr. Fournier was supposed to pick up the package from the airport, deliver the documents to the Alcaldie's office and establish the file.

5. Other than Sr. Santiago's self-serving statement to that effect, no other tangible evidence of this sequence of events is offered. No receipt from the airline delivery service has been produced, no receipt that Mr. Fournier actually picked up the package has been offered and no letter to or from the Alcaldie's office concerning establishment of the public file in Culebra has been produced. Attached to this reply is a letter from the Secretario Municipio of Culebra, Sr. Bobby Feliciano, stating that the first time the Alcaldie received any documents from Santiago and Rodriguez was on August 13, 1993, shortly after Matos' petition was filed.

6. The only corroboration of Sr. Santiago's Declaration comes in the form of a statement from Mr. Fournier that is neither made pursuant to Section 1.16 of the Commission's Rules nor made under oath and notarized. Without being made under oath, or under seal, Mr. Fournier's statement carries no weight. The veracity of not only the deposition testimony, but now also the Santiago declaration accompanying thier opposition to the Petition must be tested. Therefore, the requested issues should be added to

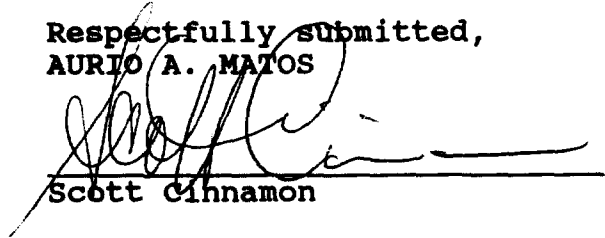
determine whether or not Santiago and Rodriguez have misrepresented certain facts before the Commission and have otherwise engaged in a pattern of repeated and willful violation of FCC rules.

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September 16, 1993

Respectfully submitted,
AURIO A. MATOS



Scott Cinnamon

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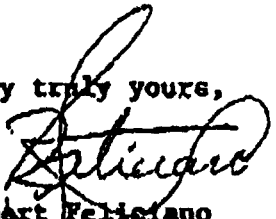
APARTADO 189
CULEBRA, PUERTO RICO 00778
TEL. 742-3521

August 19, 1993

I, Robert Feliciano Certify that on August 13, 1993, at 1:20 p.m.
Mr. Lloyd Santiago came to my office and gave me a copy of an
application for a radio station in Culebra. It was the first time
that he had come to my office, also is the first time I had established
any kind of file for him.

Mrs. Iris N. Maldonado, our receptionist is witness of the mentioned
information.

Very truly yours,


Robert Feliciano
Secretario Municipal



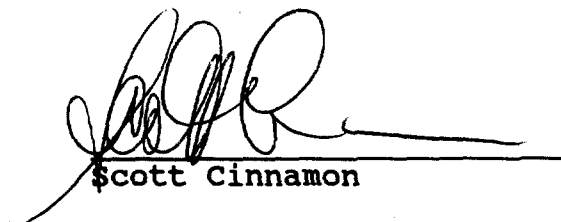
CERTIFICATE OF SERVICE

I, Scott Cinnamon, do certify that on this 16th day of September, 1993, a copy of the foregoing was sent via first class mail, postage pre-paid or delivered, as indicated, to the parties set forth below:

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Scott Cinnamon

* - Hand delivered
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